SUPREME COURT, U.S.
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No. 01-985

In The

Supreme Court of the United States

SHERI SAWYER MADISON,

Petitioner,

v.

IBP, INC.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether a plaintiff who has submitted her federal claims to a jury based on an erroneous statute-of-limitations cutoff (not a continuing violation theory) may salvage her punitive damages awards on appeal by arguing that her case involved a continuing violation?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Sup. Ct. R. 29.6, respondent IBP, inc. states that all of its stock is owned by its parent corporation, Tyson Foods, Inc.

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STATEMENT OF THE CASE

Petitioner Sheri Sawyer Madison ("Madison"), a Caucasian woman, began working for respondent IBP, inc. ("IBP") as a meatcutter at its hog processing plant in Perry, Iowa in 1989. Appendix to Petition ("App.") 1, 3. Except for a brief period in 1991, she worked at that plant through the trial ten years later. *Id.* at 13, 74. She claims that she was denied at least twenty-three promotions because of her gender and because she was involved with an African American man and was the mother of biracial children. *Id.* at 4, 13, 17. She claims to have suffered sexual and racial harassment resulting in a hostile working environment, which caused her to "constructively demote" herself several times, and that she was denied promotions and unfairly disciplined in retaliation for her complaints. *Id.* at 4, 17.

Madison filed an administrative charge (alleging sex discrimination) on January 13, 1995 and an amended charge (alleging race discrimination) on April 3, 1996. App. 17. On September 18, 1996, she sued IBP under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, 42 U.S.C. § 1981, and the Iowa Civil Rights Act, Iowa Code ch. 216. App. 1-2, 17. The case was tried before the Honorable Celeste F. Bremer, United States Magistrate Judge, and a jury in February 1999. *Id.* at 17, 55-56, 214.

An issue throughout the litigation has been whether the limitations period for a Title VII claim began 300 days (as IBP argued) or two years (as Madison argued) before Madison filed her administrative charge. App. 183-84. Likewise, the parties disputed whether the statute of limitations governing a § 1981 claim after the Civil Rights

Act of 1991 is the two-year Iowa personal injury statute (as IBP argued) or the four-year statute, 28 U.S.C. § 1658 (as Madison argued). App. 185-87. To simplify the issues for the jury, Madison chose to submit all of her claims using a uniform limitations cutoff date of January 13, 1993, which was two years before the filing of the first administrative charge. *Id.* at 186. With Madison's consent, the district court instructed the jury that Madison could not "recover for any unlawful incidents or damages prior to January 13, 1993" and "[p]unitive damages are limited to conduct occurring after January 13, 1993." *Id.* at 28, 33. The case was not submitted to the jury on a continuing violation theory.

Six claims were submitted to the jury: sex discrimination, sexual harassment, race discrimination, racial harassment, retaliation, and constructive demotion. The jury returned verdicts for Madison in the following amounts:

	Backpay & Benefits	Emotional Distress Damages	Punitive Damages
Sex Discrimination	$50,688.00	$ 10,000.00	$364,000.00
Sexual Harassment	$ 0.00	$100,000.00	$600,000.00
Race Discrimination	$ 0.00	$ 5,000.00	$ 30,000.00
Racial Harassment	$ 0.00	$150,000.00	$900,000.00
Retaliation	$25,000.00	$ 0.00	$150,000.00
Constructive Demotion	$ 979.00	$ 1,750.00	$ 25,000.00

App. 65-66. After capping the punitive damages awards for sex discrimination and sexual harassment at $300,000, the district court entered judgment on the jury verdict for $1,748,417, plus prejudgment and post-judgment interest. *Id.* at 213-14. The court also awarded Madison $444,691.33 in attorneys' fees and costs. *Id.*

On appeal, the United States Court of Appeals for the Eighth Circuit held that the district court erred by instructing the jury that January 13, 1993 was the cutoff date for damages on Madison's federal claims. App. 32. The court held that (1) the damages recovery period for Madison's § 1981 claim began two years before the lawsuit was filed, or September 18, 1994, and (2) the damages recovery period for Madison's Title VII claim began 300 days before the administrative charge was filed, or March 19, 1994. *Id.* at 30, 32. Accordingly, the Eighth Circuit vacated the punitive damages awards and remanded the case for a new trial on punitive damages. *Id.* at 32-33. The court affirmed the awards of backpay and benefits and emotional distress damages under the Iowa Civil Rights Act, finding that Madison established a continuing violation under Iowa law that would justify recovery for any unlawful incidents or damages back to January 13, 1993. *Id.* at 37-38.

On September 21, 2001, the court of appeals denied the petitions for rehearing by the panel and rehearing *en banc*. App. 215. Madison timely filed a petition for certiorari.

ARGUMENT

Madison proposes alternatively that the Court (a) accept this case for plenary review or (b) hold this case in abeyance pending its decision in *National Railroad Passenger Corp. v. Morgan*, 121 S. Ct. 2547 (2001). Petition for Certiorari ("Pet.") at 9-10. IBP opposes the first alternative but does not oppose the second.

1. The Court should deny Madison's request that the Court grant certiorari, review the judgment of the Eighth Circuit, "reverse that portion of the decision below respecting punitive damages," and "remand[ ] with instructions to enter final judgment in Madison's favor." Pet. at 9. This case does not warrant plenary review. In *National Railroad Passenger Corp. v. Morgan*, argued on January 9, 2002, the Court is likely to address the existing conflict among the circuits on the application of the continuing violation doctrine in the employment discrimination context. That same conflict does not justify a request that the Court take this case as well. Because *National Railroad Passenger Corp. v. Morgan* involves only Title VII claims, Madison stresses that this case "presents the additional parallel issue of whether the damage recovery period for § 1981 continuing violation cases is also limited by the applicable statute of limitations." *Id.* at 8. Madison states that the Court's "ruling on this companion issue will avoid litigation in the lower courts on the question of whether its decision in *Morgan*, with respect to damages recovery in Title VII continuing violation cases, applies with equal force and effect to continuing violation cases under § 1981." *Id.* at 9. Madison does not cite any authorities, offer any analysis, or even

attempt to explain why this point presents a compelling reason for the Court to grant certiorari.

Even if the Court were interested in taking another continuing violation case, this case is not a suitable candidate. Madison wants the Court to grant certiorari and uphold the punitive damages awards that the court of appeals vacated. The continuing violation doctrine, however, cannot salvage those awards. With Madison's consent, the district court submitted the plaintiff's six claims to the jury using a uniform limitations cutoff of January 13, 1993. The jury was not asked to decide whether there was a continuing violation or when any such violation began. Madison settled on January 13, 1993 as an acceptable cutoff date for all claims because it simplified the issues for the jury and because she believed – wrongly, as it turned out – that it fell within the limitations periods for Title VII and § 1981. *See* App. 28-29, 186. Madison argued, and the district court agreed, that the limitations period for Title VII claims began two years, rather than 300 days, before she filed her administrative charge. Madison argued, and the district court agreed, that a four-year statute of limitations, rather than Iowa's two-year personal injury statute, applied to her § 1981 claims. On both issues, the Eighth Circuit disagreed, *see* App. 30, 32, and Madison has not challenged either ruling here. The limitations period presented in the jury instructions was fourteen and twenty months too long under Title VII and § 1981, respectively. *Id.* Because the case was submitted to the jury on erroneous jury instructions, and not on a continuing violation theory, the resulting punitive damages awards cannot stand.

The continuing violation doctrine will not allow Madison to hold onto her punitive damages awards for another reason: most of the six claims presented to the jury are not susceptible to continuing violation treatment. Within each claim, Madison alleged various discriminatory acts by different decisionmakers, supervisors, and co-workers occurring over the course of her employment. Many of these acts are not continuing violations. For example, the sex discrimination and race discrimination claims were premised on twenty-three instances in which Madison claims that she was denied a promotion because of her gender and her interracial relationships. *See* App. 13, 37. Failures to promote are not continuing violations under federal law. *See, e.g., High v. University of Minnesota*, 236 F.3d 909, 909 (8th Cir. 2000) ("This court has never applied the continuing violations doctrine to a discrete act, such as failure to promote, and we decline to do so now."); *Stolzenburg v. Ford Motor Co.*, 143 F.3d 402, 405 (8th Cir. 1998) (plaintiff's claim that he was denied more than twenty promotions involved discrete violations, not a continuing violation). Nor is this a case in which the plaintiff did not come to the belief that she was being discriminated against until after she had been denied a number of promotions. *See Galloway v. General Motors Service Parts Operations*, 78 F.3d 1164, 1167 (7th Cir. 1996). Madison briefly quit her job in April 1991, claiming that she had been denied promotions because of sex and race discrimination. App. 74.

There is no compelling reason why the Court should accept this case for plenary review. Accordingly, Madison's first prayer for relief should be denied.

2. IBP does not oppose Madison's alternative prayer that the Court hold this case pending its decision in *National Railroad Passenger Corp. v. Morgan* and consider then whether it would be appropriate to grant, vacate and remand to the Eighth Circuit for reconsideration in light of that decision. The Court may have the opportunity in *National Railroad Passenger Corp. v. Morgan* to bring some clarity to what has been described as "arguably the most muddled area in all of employment discrimination law." 2 B. Lindemann & P. Grossman, *Employment Discrimination Law* 1351 (3d ed. 1996). The court below acknowledged that "[i]n the Eighth Circuit plaintiffs may only recover damages on their federal employment discrimination claims for acts committed during the statute of limitations period, even if there was a continuing violation," whereas "[o]ther circuits permit a plaintiff to recover under federal law for the period of any continuing violation." App. 29 & n.12 (citing *Kline v. City of Kansas City Fire Dep't*, 175 F.3d 660 (8th Cir. 1999), *cert. denied*, 528 U.S. 1155 (2000); *Bonner v. Guccione*, 178 F.3d 581 (2d Cir. 1999); *Provencher v. CVS Pharmacy*, 145 F.3d 5 (1st Cir. 1998); *Rush v. Scott Specialty Gases, Inc.*, 113 F.3d 476 (3d Cir. 1997)). Because the Court's decision in *National Railroad Passenger Corp. v. Morgan* might clarify the law that would apply to the punitive damages retrial that the Eighth Circuit has ordered for this case, it may be appropriate for the Court to hold this case pending its decision in that case.

CONCLUSION

This case does not warrant plenary review. It may be appropriate, however, for the Court to hold the case pending its decision in *National Railroad Passenger Corp. v. Morgan* and then consider whether to grant, vacate and remand to the Eighth Circuit for reconsideration in light of that decision.

Respectfully submitted,

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